

Executive Registry

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MEMORANDUM FOR: Deputy Director of Central Intelligence

FROM: Robert W. Magee
Director of Personnel

SUBJECT: Thoughts for your 29 March Meeting with Stockman
re Retirement

1. Following are some talking points for your meeting on 29 March with Mr. Stockman over retirement.

2. Background: I think we have made the case as well as we can on why CIA is an indivisible, special Agency. You can provide vigorous oral support, but there is not much value in my simply repeating herein the elements so well articulated in our two earlier Stockman letters. The only arrow we haven't used is the NSDD 84 one. Might be able to use that effectively. If by now we have not made them see the logic of our position, the case is probably lost...for the time being. Accordingly, I think our attention should now be focused on how we can provide the Administration a graceful, face-saving, non-precedent way to accede to our requests. This memo discusses four basic questions:

- How much will it actually cost to exempt us?
- How have we historically used our special authority. Have we been prudent or greedy?
- What about our use of annuitants? Are we vulnerable on that score?
- Mechanically, how can we exempt all CIA personnel in the legislative process without getting the silhouette so high as to cause a furor from other elements for equity?

3. Cost: This is a cost-driven issue with the Administration. If they exempt us, what will the actual dollar savings be? Please look at Attachment 1 which summarizes the savings for our Civil Service retirees (n.b. nothing in this paper applies directly to CIARDS. I am assuming the CIARDS battle is won and, therefore, urge it no longer be discussed.) The total Civil Service outlay is our best estimate of what the retirement bill will be in the years given. The following four numbers (i.e., penalty,

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COLA, high 5, COLA,) are based on the Administration's formula for calculating these figures, not ours. We focused on impact in the next five years. Admittedly, the full impact of the savings will not be realized until after the tenth year when the 10-year phase-out period expires. My logic is that we are dealing with an immediate problem so talking about what the situation might be on or after 1996 is probably not too pertinent. If all Administration proposals go through, the total savings from a CIA standpoint are peanuts (3.2 million, 5.04, 6.07, 7.5, 9.1). I want to stress this is if all proposals go through. We are not resisting the last three. We are only resisting the penalty for early retirement and as you can see from the chart, the actual dollar savings are infinitesimal (.08, .3, .6, 1.1, 1.7). Will logical men risk damaging the intelligence organization of this country for such a pittance? I think not.

Special Authorities. Has the Agency historically been prudent in use of these authorities or have we used them broadly to carve out a lot of special benefits for our employees? I think this is an important point because it goes to our credibility. Are we just whining; is this just another CIA grab? The record clearly shows prudent use of the authority by responsible officials. Attachment 2 shows the types of things where we could have varied but chose not to; e.g.:

PMCD basically follows the Classification Act.

SIS follows SES.

Our performance appraisals follows government performance appraisals.

Our incentive awards system follows government systems.

We have a vigorous IG despite not being subject to the IG Act of 1978.

Our logistics procedures closely track government wide procedures.

Our travel rules are consistent.

Our leave system is consistent.

Our overtime premium pay rules are consistent.

As further evidence of our organizational discipline, you could cite our request for a GEHA subsidy. Our case was strong. No one argued the merits. OMB's answer was no employee benefits this year. We understood and complied without appeal.

Spousal legislation is another example. The Administration knows that we favored the Mazzoli Bill as recognition of the service of Agency spouses. OMS said no and again we complied.

Where we have varied from the government wide systems, there were good and solid operational reasons as noted in Attachment 2. Reasonable men must

conclude the Agency has been historically prudent in use of these authorities and has followed not only the letter, but spirit and intent of the law makers. We make retirement an issue not lightly but because of its importance to the intelligence mission forces our hand.

4. What about rehired annuitants? You and I have differed on this issue, but I still maintain that we are not vulnerable by rehiring annuitants. Burnout does not equate to dying. Indeed, the intent of our early-out system is to allow our employees to be released from the pressures of the profession before burnout impacts on their performance. Most of our retirees go on to take second jobs. They burned out from the day-to-day pressures of this career. They did not totally incinerate. It is a fact that release from the constant pressure of daily intelligence life, supervisory responsibility, commitment to total instant mobility, medical limitations, family pressures, etc. relaxes and refreshes an individual. Now, if some of these people under this more relaxed circumstance are interested in spending part of their retirement years using their expertise on our behalf and if we have a need for their services, why not? It is very economical for the government. Note the following:

-- The average retirement grade is GS-14, which is \$170 per day. In addition to that, the government contributes 11.8% towards benefits which means that a GS-14 costs the USG \$190 per day.

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I doubt that OMB will come at us on this point, but if they do, it seems to me this argumentation has merit.

5. How to do it? This is the \$64 questions. Can we provide the Administration a way to simply walk away from this question but still agree to our proposal? Can we disassociate from the current Bill? YES! The answer goes back to one of our earliest discussions about a single CIA retirement bill. This can be achieved by simply amending CIARDS by legislation to include all CIA employees and create within CIA a second tier of employees who will equate to the current CSRS system. The amendment would follow government-wide rules in all respects except the critical age exemption. As you know, we must amend CIARDS some way to allow for the supplemental. Since we are amending it anyway, why not amend it to include the rest of the people. As you will recall, there are some persuasive security and management reasons for administering all CIA employees under one plan. If you could get Administration acquiesence to our handling our retirement problems separately, then it seems to me that CIA as a controversial issue with all of its precedent risks could disappear below the surface and the Administration could go forward with its plan without our nagging at them. Surely they would pay a price for that benefit. If you gain Administration agreement to this tactic, then we have a very tidy and marketable product to deal with on the Hill, not only with our Oversight Committees but also with the House Post Office Committee on 25 April.

6. In conclusion, I urge an argumentation that has the following logic:

- Our mission is unique.
- This government has historically acknowledged it and we have been prudent in exercising our authorities.
- The cost saving is infinitesimal.
- We can do it without fanfare by amending CIARDS.

Robert W. Magee
Robert W. Magee

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p.s. Attachment 3 are the answers to the last set of questions OMB requested.

We can only go back to 1980.

STOP PRESS: I've just read the Administration's supplemental proposal. It's too early to comment on what the impact will be on us; we're studying it. The proposal doesn't impact, however, on all of the above. We can incorporate the final supplemental decisions in a CIARDS amendment.

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ATTACHMENT

Form 866
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MEMORANDUM FOR: Director of Personnel

FROM: [redacted]

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Deputy Director of Personnel for Policy,
Analysis, and EvaluationSUBJECT: Conservative Use of Agency Special
Authorities

1. You asked us to consider how and to what extent the Agency has conformed to Title 5 or other general Government-wide law in the personnel, benefits, and management areas, even though the Agency is exempted or possesses independent authority with respect to the matter involved; and how and to what extent the Agency has in fact flexed its statutory muscles and used its special authorities to diverge from or exceed Title 5.

2. Attached are two lists. The first summarizes those areas where the Agency, despite its exempted status and/or its special authorities, abides by Title 5 or similar Government-wide principles and practices. The second list provides leading examples of where the Agency has gone beyond 'normal' Government-wide rules and procedures, in reliance on its special authorities.

3. As I believe the substance of these two lists bears out, the Agency has essentially adhered to Title 5 law in very broad and major areas, such as classification, pay, leave, awards, and domestic relocation; and modified or supplemented Title 5 rules, by contrast, in very circumscribed and narrow ways justified by mission imperatives (e.g., Sunday premium pay for part-timers in only a few components, the special leave benefit of [redacted], pay banding on a limited experimental basis in one office, etc.). It also should be noted that all exercises of Section 4(b) authority must be justified to the HPSCI and SSCI either as constituting 'straight' adoptions of Foreign Service benefits or authorities, or as necessary to meet special requirements of intelligence work. Section 8 authority is used only after strict scrutiny by the OGC indicates it would be legal to do so. In sum, the Agency has been quite conservative in its use of its extraordinary expenditure and allowances and benefits authorities.

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I. EXEMPT OR HAVE INDEPENDENT AUTHORITY BUT FOLLOW TITLE 5

Although exempt from the Classification Act of 1949, as amended (see 5 U.S.C. § 5102 (a)(1)(vi)), the Agency follows with only minor variances * the position classification principles of Ch. 51 of Title 5, U.S. Code; and the General Schedule pay rates ** and rules for step increases under Ch. 53 of Title 5.

Although exempt from the Title 5 provisions concerning prevailing rate employees (see 5 U.S.C. § 5342(a)(1)(E)), the Agency follows those principles.

Although not covered by the provisions of Title 5 pertaining to the Senior Executive Service (see 5 U.S.C. § 3132(a)(1)(B)), the Agency's Senior Intelligence Service adheres to the SES rules concerning the ES-4 pay cap, the ES-1 ceiling on aggregate fiscal-year compensation, amounts of and criteria for performance awards and rank stipends, sabbaticals, etc.

Although exempt from the Title 5 rules concerning performance ratings (see 5 U.S.C. § 4301(1)(v)), the Agency essentially abides by the general Executive-agency-wide principles and guidelines specified in Ch. 43 of Title 5.

Although the Agency possesses independent statutory authority under Section 8 of the CIA Act to craft its own incentive awards program, nonetheless, the Agency administers such awards in accordance with Ch. 45 of Title 5, U.S. Code.***

The Agency, while not subject to the Inspector General Act of 1978, as amended, has a vigorous and active Inspector General established by Agency regulation.

Although "nothing" in the Federal Property and Administrative Services Act of 1949, as amended, "impair(s) or affect(s) any authority of the CIA" (see 40 U.S.C. § 474(17)), the Agency's rules pertaining to procurement and disposition of property closely track the general Government-wide practices, with divergences only as necessitated by operational or similar intelligence factors.

Notwithstanding the Agency's independent allowances and travel authority in Section 4(b) of the CIA Act, the Agency adheres to the provisions of Subchapter 2 of Ch. 57, Title 5 concerning domestic travel and domestic relocation.****

* E.g., dual tracks for analysts, and the 'magnet' principle for secretaries.

** GSO is a divergence, as is pay banding experiment.

*** Language Incentive awards are under Section 8.

**** But note MIP and ATC.

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While Section 8 of the CIA Act authorizes the Agency to fashion a leave system separate and distinct from that established pursuant to the Annual and Sick Leave Act of 1951, as amended, the CIA leave system generally is on all fours with the provisions of that Act.*****

Although Section 8 vests the Agency with broad independent pay authority, the Agency follows Title 5 law with respect to overtime and premium pays under Ch. 55 of that Title.

***** HR 20-48d has no Title 5 counterpart or equivalent.

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II. USES OF SPECIAL AUTHORITIES AND/OR EXEMPTIONS

- = Unlike the rest of the Executive agencies, the Agency pays Sunday premium pay to part-time employees in certain narrowly circumscribed situations when and as necessary to ensure the performance of time-sensitive and critical intelligence activities [Section 8].
- = The Agency is exempt from the "merit pay" provisions in Ch. 54 of Title 5, and has not implemented or adopted any identical system as a matter of policy.
- = The Agency uses its independent authority to designate shortage-category EODs entitled to EOD travel and HHE shipment at official expense, without requirement for OPM approval [Section 4b].
- = The Agency's special scientific and engineering pay schedules do not follow dollar-for-dollar the OPM schedules under 5 U.S.C. § 5303 [Exemption; Section 8].
- = The Agency pays for lease-breaking and residence transaction expenses incident to most foreign-to-domestic and domestic-to-foreign PCS transfers; under Title 5, such expenses are reimbursable only for domestic-domestic transfers [Section 4b].
- = The Agency may provide thirty days' special leave and related travel for employees overseas subjected as a result of official status to unusual physical or psychological abuse, who are PNG'ed or whose return is determined to be necessary by Headquarters [Section 4b].
- = The Agency has Mobility Incentive Pay and Addition to Compensation. [Section 8...].
- = Like the Foreign Service but unlike other agencies, the Agency can pay for domestic retirement relocation moves [Section 8—Section 4b].
- = A pay banding experiment is being conducted [Section 8].

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